

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUZANNE GENEREUX, et al.,	*
	*
Plaintiffs,	*
	*
	*
v.	*
	Civil Action No. 04-12137-JLT
	*
	*
AMERICAN BERYLLIA CORP., et al.,	*
	*
Defendants.	*

ORDER

May 12, 2005

TAURO, J.

This court hereby orders that:

1. Motion of Defendant Raytheon Company to Dismiss Count VIII of the Complaint
Pursuant to Fed. R. Civ. P. 12(b)(6) [#8] is ALLOWED with respect to Plaintiffs Barry, Angela, and Krista Genereux for failure to allege damages. This court agrees with Judge Zobel that “increased risk of developing cancer or some other disease in the future does not by itself give rise to a claim for damages. To recover for future injuries, plaintiff must show present objective symptoms of illness or disease and he must demonstrate a reasonable probability that injury from that disease will continue into the future.”¹ Count VIII as to Plaintiffs Barry, Angela, and Krista Genereux is dismissed WITHOUT PREJUDICE;

¹Caputo v. Boston Edison Co., Civ. A. No. 88-2126-Z, 1990 WL 98694, at *4 (D. Mass. July 9, 1990).

2. Motion of Defendants Kyocera America, Inc. and Kyocera Industrial Ceramics Corp. to Dismiss Amended Complaint or for Summary Judgment [#10] is DENIED WITHOUT PREJUDICE to raising the issue after the close of discovery;
3. Motion of Defendants Brush Wellman Inc., Brush Wellman Ceramics Inc. and Brush Wellman Ceramic Products Inc. to Dismiss Counts IV, V, VI, VII, VIII, XII, and XIII of Plaintiffs' Amended Complaint for Failure to State Claims upon Which Relief May Be Granted [#12] is ALLOWED as to Count VIII and DENIED as to Counts V, VI, and XIII; and
4. Defendant Brush Wellman Inc.'s Motion for Leave to File Supplemental Brief in Support of its Motion to Dismiss Count VIII of Plaintiffs' Complaint [#50] is DENIED AS MOOT.

IT IS SO ORDERED.

/s/ Joseph L. Tauro
United States District Judge